

FREDERICK COUNTY RESTORATION PLAN

PUBLIC PARTICIPATION DOCUMENT

June 30, 2016

ABOUT THE FREDERICK COUNTY RESTORATION PLAN

The Frederick County Stormwater Restoration Plan satisfies the requirements of PART IV.E.2.a and b of the NPDES MS4 permit 11-DP-3321 MD0068357 dated December 30, 2014 for the Impervious Cover Restoration Plan and Total Maximum Daily Load (TMDL) Restoration Plans. The Restoration Plan addresses twelve TMDLs for local waterways, two for the Chesapeake Bay, and an impervious surface restoration requirement. The plan is due to MDE on June 30, 2016. This Plan demonstrates that Frederick County Government is on track to meet the restoration efforts required under its current permit and has a long term plan to address its portion of stormwater wasteload allocations for all TMDLs in Frederick County.

PUBLIC PARTICIPATION REQUIREMENT

As required by Part IV.E.3 of the MS4 Permit (MDE Permit 2015), public participation is required for Frederick County's watershed assessments and restoration plans. The specific requirements include:

1. Notice in a local newspaper indicating a 30-day public comment period for each watershed assessment and restoration plan,
2. Notice in a local newspaper announcing that public information procedures are provided on the County's website for each watershed assessment and restoration plan, and
3. A summary in the Annual Report on public participation activities for each of the watershed assessments and restoration plans.

The Restoration Plan was posted to the website on May 30, 2016. Public notice was published in the Frederick News Post on May 31 and June 1. The thirty day review period went from May 31 to June 30. The report was submitted to MDE on June 30, 2016. A summary will be published in the Annual Report for Fiscal Year 2016 to be issued December 30, 2016.

PUBLIC COMMENT

COMMENTERS:

- Alison Prost, Maryland CEO, Chesapeake Bay Foundation
- Steve Cassis, Solid Waste Analysis Group

COMMENTS AND RESPONSES:

Comment	Response
Commenter states that the Plan does not meet permit requirements.	Frederick County believes that its plan complies with permit requirements to the Maximum Extent Practicable, the governing standard for NPDES MS4 permits under the Clean Water Act. The County prepared an MEP analysis during the permit renewal process for consideration by the Maryland

	<p>Department of the Environment. Frederick County's permit reissuance is currently in litigation, initiated by both CBF (Case 10-C-15-000259) and Frederick County Government (Case 10-C-15-00293).</p>
<p>Commenter believes that trading is not an approved or legal practice under the County's current MS4 Permit. Commenter believes trading has been rejected by the U.S. Environmental Protection Agency (EPA) unless and until the County's MS4 Permit undergoes major modification.</p>	<p>MDE advised counties with Phase I MS4 permits that MDE would allow for them to meet up to half of the impervious cover requirements in the current permit by trading in time; trading is intended to lengthen the compliance schedule to restore the 20% but not remove any jurisdiction's responsibility to comply with the full retrofit requirement.</p> <p>MDE and its attorney Paul DeSantis have stated in several public forums that they believe trading to be eligible within existing permits because the state's Accounting For Stormwater Wasteload Allocations and Impervious Acres Treated (August 2014) document allows for alternative practices, as does their Phase II WIP; however, two staff at EPA, to our knowledge have expressed concern to MDE in an email and a letter that they would like to see trading as part of a major permit modification for MS4 Phase I permits.</p> <p>Trading is an evolving issue. Frederick County staff are participating on the state's Water Quality Trading Advisory Committee. MDE seeks to develop trading rules by fall 2016, well before the December 30, 2019 end date for Frederick County's NPDES MS4 permit.</p> <p>It is premature to state any absolutes about trading at this time. The County notes that it has the ability to update its plan and report progress with each Annual Report for its MS4.</p>
<p>Commenter states that the plan does not meet Bay goals for nitrogen reductions.</p>	<p>This is not the case; the load reduction required to address the SW-WLA for the Chesapeake Bay TMDL for Nitrogen (following MDE's instructions for disaggregation and calibration) is 60,679.72 pounds delivered to the Bay or 111,838.76 Edge of Stream pounds per year. These load reductions are met by the Plan. As seen in Table 12 on p.26 and Figure 14 on Page 27, the delivered load reduction in the plan is 60,679.72 pounds.</p>
<p>Commenter supports MDE's interpretation of the MS4 to include all land within the County boundaries.</p>	<p>This issue is currently in litigation.</p>
<p>Commenter states that the Plan will not result in improved water quality in Frederick County because the 20% retrofit will not be accomplished.</p>	<p>Frederick County disagrees. It is not planning to replace any of the required 20% retrofits; rather, trading is intended to help with the compliance schedule on the second ten percent.</p>
<p>Commenter states that the Plan will not result in improved water quality because wastewater treatment plant credits do not meet the additionality standard, i.e. that actual reductions from the baseline</p>	<p>The County acknowledges that it is premature to know the source of credits for trades at this time; however the County strongly disagrees with the commenter's assertions about the eligibility of credit generation</p>

load for the TMDL will not occur, because load reductions from wastewater have already taken place. For this reason, commenter believes that wastewater treatment plants should not be able to generate credits from unused capacity.

from WWTPs. The *Maryland Policy For Nutrient Cap Management And Trading In Maryland's Chesapeake Bay Watershed* document, effective April 17, 2008 and signed by then MDE Secretary Robert Summers and Governor Martin O'Malley determines the concept of additionality for WWTPs. In Section 4.7 of the Cap Management Strategy document, it states that "BMPs or other potential credit-generating activities occurring after the effective date of this policy may be submitted for review to determine credit eligibility. BMPs or other activities that were completed prior to the effective date of this policy may also be submitted for review and determination of credit eligibility if continuing maintenance of the activity shows it is meeting and exceeding the baseline and eligibility requirements on a continuing basis." Furthermore, MDE 2008 also explicitly allows for the sale of credits from both performance and flow: "ENR facilities may generate point sources discharge credits by:

- Optimizing treatment operation;
- Maintaining flow at less than the design flow basis of its nutrient wasteload allocation (WLA)." The reason MDE will allow for certain plants to generate credits is because they have met their TMDL load reduction goals. Thus, plants that upgraded to ENR after April 17, 2008 and meet their TMDL WLA are able to generate credits. Additionality is not based on today's date or today's loads, it is based on having reduced baseline adequate to meet TMDL loads prior to generating credits in excess of the required reduction. MDE clearly intended for WWTPs to be able to participate in market trades, stating that in Section 4.2 that "water quality credits may be generated from point source discharges funded through a variety of sources such as the State Revolving Fund, local funds, private funds or grant dollars. The cost of credits is determined by the market."

Over a billion of dollars of investment was made to reduce wastewater treatment plant loads based on the guarantees provided the 2008 Cap Management Strategy. If a plant outperforms its standards, it should have an incentive to continue to do so; especially since this performance can come at an additional maintenance cost.

Finally, Virginia's water quality trading program allows for wastewater treatment plant credit exchanges for both capacity and performance.

All this said, Frederick County is looking at generating and exchanging credits from its WWTPs based on only

	the performance fraction beyond the 4mg/ml standard from operating loads, and not from capacity.
Commenter believes that trades should lower costs and retire credits.	The County plans to use trades for this reason. Retirement of credits is written into MDE's draft trading manual. For example point-to-point source trades have a 5% retirement in addition to the benefit provided by meeting the need for a pollutant reduction. However, trades generated by WWTPs can be certified from actual discharge monitoring reports that reflect real data and are signed under penalty of law; for this reason a 5% retirement is not needed as a safety.
Commenter believes that WWTPs should meet a 3mg/ml standard rather than a 4 mg/ml standard prior to being able to generate credits to exchange.	The <i>Maryland Policy For Nutrient Cap Management And Trading In Maryland's Chesapeake Bay Watershed</i> document states that the ENR standard of 4.0 mg/ml must be met prior to generating credits. It even provides sample calculations using 4mg/ml in Appendix B.2, Sample Calculation of Available Nitrogen Discharge Credits from ENR facility. MDE's <i>Draft Maryland Trading And Offset Policy And Guidance Manual Chesapeake Bay Watershed</i> Section 3.1 on Significant Point Sources states that "significant municipal WWTPs in Maryland are those with a design capacity of 500,000 gallons per day (gpd) or greater. Annual WLAs for significant facilities are based on design capacity consistent with the approved local water and sewer plan as of April 30, 2003 and an annual average concentration of 4.0 mg/l TN and 0.3 mg/l TP, a.k.a, ENR treatment." These limits are written into ENR permits.
Commenter claims that only nitrogen credits have been discussed for trades, and that the County may be able to meet phosphorus and total suspended sediment requirements without trades.	The County has not proposed trading as a strategy to meet TMDLs at this time, only as a strategy to extend the compliance timeframe for its 20% retrofit requirement. However it would need nitrogen, phosphorus and TSS credits. The following language has been added to page 10 under Water Quality Trading: "WWTPs can also generate credits for phosphorus and TSS by outperforming standards."
Commenter states that the County has not made efforts "to avail itself of a number of programs, practices, or legal tools that could support the implementation of projects" and that it does not "identify partnership opportunities or collaboration with other restoration organizations and groups" Commenter notes that partnerships may help the county to leverage money and staff.	The County agrees that this version of the plan is thin on explanation of its outreach efforts, programs, partnerships, grant applications, etc. These efforts do exist. For example, the County manages the Monocacy and Catocin Watershed Alliance out of the Office of Sustainability and Environmental Resources. This effort works with partner groups and citizens to protect and restore water quality and habitat; this effort leverages millions of dollars per year. The County also applies for grants from the state and has been successful in obtaining BRF funds to conduct septic denitrification. It has also gotten several million dollars in the past from the Environmental Protection

	<p>Agency (passed through MDE) and National Fish and Wildlife Foundation to conduct environmental restoration projects. It currently is funding its Neighborhood Green program, a private homeowner-scale stormwater retrofit program through grant funds. The Delauter Road driving surface aggregate project to restore brook trout habitat in Fishing Creek has \$142K in grant funds from NFWF. These grants were awarded prior to 2015. The County has not been successful to date in receiving money from the state's Chesapeake Bay Trust Fund because its projects were not in the right phase and do not score high compared to projects closer to the bay; however, the county will continue to apply for these funds. The County did apply for revolving loan funds but was able to find a better borrowing rate elsewhere.</p>
<p>Commenter suggests that a stormwater fee would incentivize private restoration through a rebate program and that a fee would allow the County to spend more money on restoration</p>	<p>The county has chosen to fund its programs through bonds and general funds at this time and has made a substantial commitment – over \$57 Million by 2020 – in its Financial Assurance Plan.</p>
<p>The Commenter notes that the “County also makes a good argument for shortcomings in the nitrogen WLA based on the removal of urban nutrient management as a required practice that does not get credited in the model as an additional load reduction and the limitation for infiltration practices in large portions of the county due to inappropriate soils.”</p>	<p>A credit for enhanced nutrient management should be considered by Maryland. It is also true that not all jurisdictions can use the same BMPs in their plans due to unique conditions, and this affects costs.</p>
<p>Commenter does not like the reliance on stream restoration as the third most commonly used practice because it is not the best practice for nitrogen reduction.</p>	<p>Stream restoration is one of the tools in the toolbox; if it is combined with floodplain management it is useful for nitrogen reduction.</p>
<p>Commenter notes that future development activity is not included in the Plan.</p>	<p>Development activity was left out on the advice of MDE because it plans to handle growth through its “Aligning for Growth” process. See p. 3 MDE Communications: No Development Scenario.</p>
<p>If the County faithfully complied with the 20% impervious surface restoration as required by the permit, based on the BMPs selected by the County, the County would still only be approximately 5% of the way towards compliance with the MS4 Permit.</p>	<p>The County does not understand this comment.</p>
<p>Commenter encourages county to convert impervious areas to forest and notes that only 1.3 acres of this is in the plan.</p>	<p>The County does not have this BMP identified as an option in its plans to date. It is not an ultra-urban County. Future plans may identify this.</p>
<p>Commenter notes that no practices are identified for private lands.</p>	<p>The County is building a program to plant and acquire easements on private property, building on the success of its Neighborhood Green and Backyard Buffers programs. All of these are private stormwater and reforestation programs. Future plans should go into more detail on the County's existing programs.</p>

<p>Commenter states that the length of time for projects in the plan to be completed is far too long, citing a bioretention project that takes six years. Commenter states that the first year of the timeframe is for watershed assessments, which are already completed.</p>	<p>Not all assessments are completed, as MDE is requiring the County to redo all of its Watershed Assessments. Where projects are already defined in an assessment, they must be programmed into the Capital Improvement Plan or funded through another mechanism, like a grant. This requires lead times. The County typically bids design and construction work separately. The public procurement and permitting processes slow projects. There is no doubt that more nimble processes should be developed for the future. As noted in the Executive Summary and Conclusion of the plan, these can include leveraging partnerships with nonprofits and public-private partnerships.</p>
<p>Commenter notes that he has received a great deal of assistance for practices on his property and wonders if they are noted in the plan.</p>	<p>Ongoing programs are implicit to the plan but unlike for agricultural properties, external funding is not as readily available.</p>
<p>Commenter asks for a glossary of terms.</p>	<p>This will be considered for a future version. This version spells out acronyms.</p>